

ESTTA Tracking number: **ESTTA298196**Filing date: **07/30/2009**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	HTC Corporation		
Entity	Corporation	Citizenship	Taiwan
Address	No. 23 Xingua Rd. Taoyuan City, 330 TAIWAN		

Attorney information	Karol A. Kepchar Akin Gump Strauss Hauer & Feld 1333 New Hampshire Ave. NW Washington, DC 20036-1564 UNITED STATES dc_ipdocketing@akingump.com Phone:202-887-4000
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Registrations Subject to Cancellation

Registration No	3450977	Registration date	06/17/2008
Registrant	TC Connection Corporation PO. Box 362, Wickhams Cay I 3rd Floor, Omar Hodge Bldg. Road Town, Tortola, VG 1110 VIRGIN ISLANDS, BRITISH		

Goods/Services Subject to Cancellation

Class 009. First Use: 2007/12/18 First Use In Commerce: 2007/12/18

All goods and services in the class are cancelled, namely: COMPUTER HARDWARE, NAMELY, HARD DRIVES FOR COMPUTERS, COMPUTER MEMORIES, AND VIDEO GRAPHICS CONTROLLERS; MULTIMEDIA ACCELERATOR BOARDS; SOUND CARDS; VIDEO DISPLAY CARDS; VIDEO OUTPUT GAME MACHINES FOR USE WITH TELEVISIONS; VIDEO DISPLAY CARDS FOR VIEWING TELEVISION PROGRAMMING ON A COMPUTER; AUDIO SPEAKERS FOR USE WITH COMPUTERS; COMPUTER VIDEO DISPLAY CARDS FOR USE WITH HAND-HELD HIGH DEFINITION TELEVISION DEVICES; HAND-HELD HIGH DEFINITION COMPUTER MONITORS FOR VIEWING TELEVISION PROGRAMMING; INTERACTIVE COMPUTER KIOSKS USED IN RETAIL, ENTERTAINMENT AND HOSPITALITY ESTABLISHMENTS; COMPUTER PROGRAMS FOR CONTROLLING ACCESS TO AND USE OF STAND-ALONE NETWORK ACCESS SERVER COMPUTERS; OPERATING SYSTEM PROGRAMS FOR USE WITH STAND-ALONE KIOSK COMPUTERS WHICH PROVIDE INTERNET ACCESS POINTS; TELEPHONES; CELLULAR TELEPHONES; DIGITAL TELEPHONES; PC TABLETS; ELECTRONIC PERSONAL ORGANIZERS; MP3 PLAYERS; HANDHELD JOY STICKS FOR PLAYING INTERACTIVE VIDEO GAMES; INTERACTIVE REMOTE CONTROLS FOR PLAYING INTERACTIVE VIDEO GAMES; COMPUTER GRAPHICS BOARDS; COMPUTER INTERFACE BOARDS; COMPUTER GRAPHICS CARDS; COMPUTER CHIPS FOR USE IN INCREASING THE PERFORMANCE OF GRAPHICS CARDS; SEMICONDUCTOR CHIPS FOR USE IN COMPUTERS; COMPUTER CHIPSET FOR USE IN TRANSMITTING DATA TO AND FROM A CENTRAL PROCESSING UNIT; MICROPROCESSORS; INTEGRATED CIRCUITS; COMPUTER CHIPS; COMPUTER MOTHERBOARDS; COMPUTER DAUGHTERBOARDS; COMPUTER INTERFACE BOARDS; SERIAL AND PARALLEL INTERFACE CARDS FOR DATA PROCESSING EQUIPMENT IN THE

FORM OF PRINTED CIRCUITS; COMPUTER SOFTWARE, NAMELY, DEVICE DRIVER SOFTWARE FOR USE WITH GRAPHICS, AUDIO, AND VIDEO ACCELERATORS; COMPUTER DRIVER SOFTWARE FOR USE WITH DATA COMPRESSION, DECOMPRESSION, MODULATION, AND DEMODULATION DEVICES; COMPUTER SOFTWARE, NAMELY, DEVICE DRIVER SOFTWARE FOR USE WITH COMPUTER MEMORY DEVICES, COMPUTER NETWORK ADAPTERS, COMPUTER SWITCHES, COMPUTER ROUTERS, COMPUTER HUBS, AND COMPUTER MODEMS; PORTABLE COMPUTERS, NAMELY, LAPTOP COMPUTERS, NOTEBOOK COMPUTERS, HANDHELD COMPUTERS, PERSONAL DIGITAL ASSISTANTS AND RELATED COMPUTER OPERATING SYSTEM SOFTWARE; BIOS COMPUTER PROGRAM SOFTWARE, AND PRINTED AND ELECTRONIC INSTRUCTIONAL MANUALS, SOLD AS A UNIT THEREWITH; COMPUTER OPERATING SYSTEM SOFTWARE, AND PRINTED AND ELECTRONIC INSTRUCTIONAL MANUALS, SOLD AS A UNIT THEREWITH; COMPUTER SOFTWARE FOR THE EDITING, ORGANIZING, MODIFYING, TRANSMISSION, AND SHARING OF DATA AND INFORMATION, AND PRINTED AND ELECTRONIC INSTRUCTIONAL MANUALS, SOLD AS A UNIT THEREWITH; COMPUTER SEARCH ENGINE SOFTWARE, AND PRINTED AND ELECTRONIC INSTRUCTIONAL MANUALS, SOLD AS A UNIT THEREWITH; COMPUTER OPERATING PROGRAM SOFTWARE, AND PRINTED AND ELECTRONIC INSTRUCTIONAL MANUALS, SOLD AS A UNIT THEREWITH; COMPUTER FIRMWARE FOR DESIGNING VIDEO GAMES; COMPUTER SOFTWARE PROGRAMS FOR THE INTEGRATION OF TEXT, AUDIO, GRAPHICS, STILL IMAGES, AND MOVING PICTURES INTO AN INTERACTIVE DELIVERY FOR MULTIMEDIA APPLICATIONS; VIDEO GAME SOFTWARE; SOFTWARE FOR MEDIA CONTENT MANAGEMENT, PREPRODUCTION AND POSTPRODUCTION; COMPUTER SOFTWARE TO ENABLE THE TRANSMISSION OF PHOTOGRAPHS TO MOBILE TELEPHONES; TELECOMMUNICATIONS NETWORKING SOFTWARE FOR CONNECTING WIRELESS COMMUNICATIONS NETWORKS; COMPUTER SOFTWARE FOR USE IN DATABASE MANAGEMENT, SPREADSHEETS AND WORD PROCESSING; DIGITAL TRADING CARDS IN THE NATURE OF EXTENDED MULTIMEDIA SOFTWARE RECORDED ON MAGNETIC MEDIA FEATURING GAMES AND STORIES; CHILDREN'S EDUCATIONAL SOFTWARE FEATURING INSTRUCTION IN THE FIELD OF GRAPHICS, ANIMATION, INTERACTIVE COMMUNICATIONS, MOVIES AND MUSIC VIDEOS, AND PRINTED AND ELECTRONIC INSTRUCTIONAL MANUALS, SOLD AS A UNIT THEREWITH; COMPUTER SOFTWARE FOR WIRELESS CONTENT DELIVERY, AND PRINTED AND ELECTRONIC INSTRUCTIONAL MANUALS, SOLD AS A UNIT THEREWITH

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>		808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)	
Registration No	3442507	Registration date	06/03/2008
Registrant	T.C. Connection Corporation PO. Box 362, Wickhams Cay I 3rd Floor, Omar Hodge Bldg. Road Town, Tortola, VG 1110 VIRGIN ISLANDS, BRITISH		

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GAMES; INTERACTIVE REMOTE CONTROLS FOR PLAYING INTERACTIVE VIDEO GAMES; COMPUTER GRAPHICS BOARDS; COMPUTER INTERFACE BOARDS; COMPUTER GRAPHICS CARDS; COMPUTER CHIPS FOR USE IN INCREASING THE PERFORMANCE OF GRAPHICS CARDS; SEMICONDUCTOR CHIPS FOR USE IN COMPUTERS; COMPUTER CHIPSET FOR USE IN TRANSMITTING DATA TO AND FROM A CENTRAL PROCESSING UNIT; MICROPROCESSORS; INTEGRATED CIRCUITS; COMPUTER CHIPS; COMPUTER MOTHERBOARDS; COMPUTER DAUGHTERBOARDS; COMPUTER INTERFACE BOARDS; SERIAL AND PARALLEL INTERFACE CARDS FOR DATA PROCESSING EQUIPMENT IN THE FORM OF PRINTED CIRCUITS; COMPUTER SOFTWARE, NAMELY, DEVICE DRIVER SOFTWARE FOR USE WITH GRAPHICS, AUDIO, AND VIDEO ACCELERATORS; COMPUTER DRIVER SOFTWARE FOR USE WITH DATA COMPRESSION, DECOMPRESSION, MODULATION, AND DEMODULATION DEVICES; COMPUTER SOFTWARE, NAMELY, DEVICE DRIVER SOFTWARE FOR USE WITH COMPUTER MEMORY DEVICES, COMPUTER NETWORK ADAPTERS, COMPUTER SWITCHES, COMPUTER ROUTERS, COMPUTER HUBS, AND COMPUTER MODEMS; PORTABLE COMPUTERS, NAMELY, LAPTOP COMPUTERS, NOTEBOOK COMPUTERS, HANDHELD COMPUTERS, PERSONAL DIGITAL ASSISTANTS AND RELATED COMPUTER OPERATING SYSTEM SOFTWARE; BIOS COMPUTER PROGRAM SOFTWARE, AND PRINTED AND ELECTRONIC INSTRUCTIONAL MANUALS, SOLD AS A UNIT THEREWITH; COMPUTER OPERATING SYSTEM SOFTWARE, AND PRINTED AND ELECTRONIC INSTRUCTIONAL MANUALS, SOLD AS A UNIT THEREWITH; COMPUTER SOFTWARE FOR THE EDITING, ORGANIZING, MODIFYING, TRANSMISSION, AND SHARING OF DATA AND INFORMATION, AND PRINTED AND ELECTRONIC INSTRUCTIONAL MANUALS, SOLD AS A UNIT THEREWITH; COMPUTER SEARCH ENGINE SOFTWARE, AND PRINTED AND ELECTRONIC INSTRUCTIONAL MANUALS, SOLD AS A UNIT THEREWITH; COMPUTER OPERATING PROGRAM SOFTWARE, AND PRINTED AND ELECTRONIC INSTRUCTIONAL MANUALS, SOLD AS A UNIT THEREWITH; COMPUTER FIRMWARE FOR DESIGNING VIDEO GAMES; COMPUTER SOFTWARE PROGRAMS FOR THE INTEGRATION OF TEXT, AUDIO, GRAPHICS, STILL IMAGES, AND MOVING PICTURES INTO AN INTERACTIVE DELIVERY FOR MULTIMEDIA APPLICATIONS; VIDEO GAME SOFTWARE; SOFTWARE FOR MEDIA CONTENT MANAGEMENT, PREPRODUCTION AND POSTPRODUCTION; COMPUTER SOFTWARE TO ENABLE THE TRANSMISSION OF PHOTOGRAPHS TO MOBILE TELEPHONES; TELECOMMUNICATIONS NETWORKING SOFTWARE FOR CONNECTING WIRELESS COMMUNICATIONS NETWORKS; COMPUTER SOFTWARE FOR USE IN DATABASE MANAGEMENT, SPREADSHEETS AND WORD PROCESSING; DIGITAL TRADING CARDS IN THE NATURE OF EXTENDED MULTIMEDIA SOFTWARE RECORDED ON MAGNETIC MEDIA FEATURING GAMES AND STORIES; CHILDREN'S EDUCATIONAL SOFTWARE FEATURING INSTRUCTION IN THE FIELD OF GRAPHICS, ANIMATION, INTERACTIVE COMMUNICATIONS, MOVIES AND MUSIC VIDEOS, AND PRINTED AND ELECTRONIC INSTRUCTIONAL MANUALS, SOLD AS A UNIT THEREWITH; COMPUTER SOFTWARE FOR WIRELESS CONTENT DELIVERY, AND PRINTED AND ELECTRONIC INSTRUCTIONAL MANUALS, SOLD AS A UNIT THEREWITH

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Attachments	Petition for Cancellation.pdf (7 pages)(255978 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Karol A. Kepchar/
Name	Karol A. Kepchar
Date	07/30/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HTC CORPORATION,	:	
	:	
Petitioner,	:	
	:	
v.	:	
	:	Cancellation No. _____
	:	
TC CONNECTION CORP.,	:	U.S. Registration No. 3,450,977; and
	:	U.S. Registration No. 3,442,507.
Registrant.	:	

PETITION FOR CANCELLATION

HTC Corporation, a Taiwanese corporation having a principal place of business at No. 23, Xingua Rd., Taoyuan City, Taiwan 330 (hereinafter referred to as “Petitioner”), believes it is and will be damaged by U.S. Registration No. 3,450,977 (for the mark DIAMOND MULTIMEDIA) and U.S. Registration No. 3,442,507 (for the mark DIAMOND TECHNOLOGIES), both of which are registered to TC Connection Corp. (“Registrant”), and hereby petitions to cancel same, pursuant to 15 U.S.C. §1064. As grounds therefor, it is alleged that:

1. Petitioner is engaged in the manufacture and sale of consumer electronics, including cellular telephones and accessories therefor. Petitioner is one of the world’s leading manufacturers of such goods and sells its products in the United States, including through Sprint.
2. Petitioner has invested a great deal of time and money in advertising and promoting Petitioner’s business and the quality of its goods, including in the United States for

several years, and is continuing to spend substantial amounts of time and money in the promotion of same.

3. According to the on-line records of the United States Patent and Trademark Office (“PTO”), Registrant is a British Virgin Islands corporation with a principal place of business at Wickhams Cay I, 3rd Floor, Omar Hodge Bldg., Road Town, Tortola, British Virgin Islands.

4. The Registrant has obtained Registration No. 3,450,977 for the DIAMOND MULTIMEDIA mark, for a variety of goods in Class 9, based on an application filed October 17, 2005, under Section 1(b) of the Trademark Act.

5. The Registrant has obtained Registration No. 3,442,507 for the DIAMOND TECHNOLOGIES mark, for a variety of goods in Class 9, based on an application filed October 17, 2005, under Section 1(b) of the Trademark Act.

6. The registrations sought to be canceled have been noted as a bar to registration to Petitioner’s Application Serial No. 77/407,131 for the mark DIAMOND under 15 U.S.C. §1052(d). Petitioner has thus been damaged by the registrations sought to be canceled herein.

7. Applications for both marks were filed Section 1(b), and in connection therewith, Registrant declared to the PTO that “The [Registrant] has a bona fide intention to use or use through the applicant’s related company or licensee the mark in commerce on or in connection with the identified goods and/or services.” (15 U.S.C. Section 1051(b)), namely:

Computer hardware, namely, hard drives for computers, computer memories, and video graphics controllers; multimedia accelerator boards; sound cards; video display cards; video output game machines for use with televisions; video display cards for viewing television programming on a computer; audio speakers for use with computers; computer video display cards for use with hand-held high definition television devices; hand-held high definition computer monitors for viewing television

programming; interactive computer kiosks used in retail, entertainment and hospitality establishments; computer programs for controlling access to and use of stand-alone network access server computers; operating system programs for use with stand-alone kiosk computers which provide internet access points; telephones; cellular telephones; digital telephones; pc tablets; electronic personal organizers; mp3 players; handheld joy sticks for playing interactive video games; interactive remote controls for playing interactive video games; computer graphics boards; computer interface boards; computer graphics cards; computer chips for use in increasing the performance of graphics cards; semiconductor chips for use in computers; computer chipset for use in transmitting data to and from a central processing unit; microprocessors; integrated circuits; computer chips; computer motherboards; computer daughterboards; computer interface boards; serial and parallel interface cards for data processing equipment in the form of printed circuits; computer software, namely, device driver software for use with graphics, audio, and video accelerators; computer driver software for use with data compression, decompression, modulation, and demodulation devices; computer software, namely, device driver software for use with computer memory devices, computer network adapters, computer switches, computer routers, computer hubs, and computer modems; portable computers, namely, laptop computers, notebook computers, handheld computers, personal digital assistants and related computer operating system software; bios computer program software, and printed and electronic instructional manuals, sold as a unit therewith; computer operating system software, and printed and electronic instructional manuals, sold as a unit therewith; computer software for the editing, organizing, modifying, transmission, and sharing of data and information, and printed and electronic instructional manuals, sold as a unit therewith; computer search engine software, and printed and electronic instructional manuals, sold as a unit therewith; computer operating program software, and printed and electronic instructional manuals, sold as a unit therewith; computer firmware for designing video games; computer software programs for the integration of text, audio, graphics, still images, and moving pictures into an interactive delivery for multimedia applications; video game software; software for media content management, preproduction and postproduction; computer software to enable the transmission of photographs to mobile telephones; telecommunications networking software for connecting wireless communications networks; computer software for use in database management, spreadsheets and word processing; digital trading cards in the nature of extended multimedia software recorded on magnetic media featuring games and stories; children's educational software featuring instruction in the field of graphics, animation, interactive communications, movies and music videos, and printed and electronic instructional manuals, sold as a unit

therewith; computer software for wireless content delivery, and printed and electronic instructional manuals, sold as a unit therewith ("Designated Goods").

8. On or about April 4, 2008, Registrant filed a Statement of Use in the application that issued as Registration No. 3,450,977 for the mark DIAMOND MULTIMEDIA, declaring that the mark was in use in commerce in connection with all the Designated Goods.

9. On or about April 4, 2008, Registrant filed a Statement of Use in the application that issued as Registration No. 3,442,507 for the mark DIAMOND TECHNOLOGIES, declaring that the mark was in use in commerce in connection with all the Designated Goods.

10. Upon information and belief, Registrant was not using DIAMOND MULTIMEDIA as a mark for all the Designated Goods when it filed its Statement of Use.

11. Upon information and belief, Registrant was not using DIAMOND MULTIMEDIA as a mark for all of the Designated Goods at the time Registration No. 3,450,977 issued.

12. Upon information and belief, Registrant was not using DIAMOND TECHNOLOGIES as a mark for all the Designated Goods when it filed its Statement of Use.

13. Upon information and belief, Registrant was not using DIAMOND TECHNOLOGIES as a mark for all of the Designated Goods at the time Registration No. 3,422,507 issued.

14. Registrant knew or should have known that the respective statements that the subject marks were in use in United States commerce for all of the Designated Goods were false or misleading.

15. Upon information and belief, Registrant's statements that the marks were in use in interstate commerce for all the Designated Goods in each application constituted knowingly false representations of material fact upon which the PTO relied in issuing the subject registrations.

16. Upon information and belief, but for the false statements of Registrant, the PTO would not have registered the marks.

17. Due to Registrant's filing of Statements of Use for goods that it knew or should have known were not in use in United States commerce, Registrant committed fraud on the PTO.

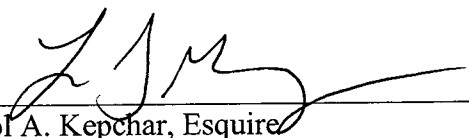
18. If Registrant is permitted to retain said registrations sought to be cancelled, thereby retaining the *prima facie* exclusive right to use the marks DIAMOND MULTIMEDIA and DIAMOND TECHNOLOGIES in commerce, Petitioner will be damaged thereby.

19. Petitioner is likely to be damaged by continued registration of said marks because the PTO Examining Attorney has initially refused Petitioner's application bearing Serial No. 77/407,131 (identified above) on the grounds that, under 37 C.F.R. § 2(d) of the Lanham Act, there is a likelihood of confusion between the parties respective marks.

WHEREFORE, Petitioner requests that both U.S. Registration No. 3,450,977 for the mark DIAMOND MULTIMEDIA and U.S. Registration No. 3,442,507 for the mark DIAMOND TECHNOLOGIES, be canceled and that this Petition to Cancel be granted.

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

By: _____

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